

### **REMARKS**

The Examiner's indication that claim 13 would be allowable with rewritten in independent form is noted with appreciation, as well is the Examiner's indication that claim 27 is allowable.

The prior Amendment stated that claim 6 was being rewritten in independent form. A review of the claims in the prior Amendment indicate that claim 6 was not rewritten in independent form. This discrepancy is brought to the Examiner's attention should a question arise when reviewing the prior Amendment.

Claims 1-10 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,849,285 to Masek. It is respectfully submitted that claims 1-10 are not anticipated by Masek.

Turning first to claims 6-8, the Office action identifies no disclosure in Masek of the following:

- a second type of inner member that is suitable for entraining a plurality of air bubbles in the dispensed beverage (as recited in claim 6)
- a frame having a filter disposed thereupon, and wherein a peripheral rim of the frame is conjoined to the selected type of outer member by welding (as recited in claim 7)
- a second type of inner member having means for producing a jet of the beverage, which means comprises an aperture in a beverage flow path between an inlet and an outlet of the cartridge (as recited in claim 8)

Each of these deficiencies with Masek was identified in the prior Amendment, but no response was made in the Office action. Accordingly, reconsideration and allowance of claims 6-8 is respectfully requested.

Turning now to claim 1 and its dependent claims, Masek does not disclose first and second inner members that are interchangeable, that are conjoinable with a first type of outer member and a second type of outer member having differing shape or configurations, as set forth in detail in the prior Amendment.

In response to the prior Amendment identifying these differences between Masek and claim 1, the Office action admits that "there is no reason to assume that either of the inner members could be used with the various disclosed outer members." (Office action, p. 4.) The applicant agrees. There is not reason to assume that three different types of items disclosed in Masek could be used interchangeably with the different outer cartridges.

However, despite this admission, the Office action asserts that the recitation in the claim that the inner members are interchangeable is not limiting to the manufacturing steps of the claim. It is recited in the claims, and thus a limitation; claim language cannot be ignored.

Further, this assertion is contradicted by the language of claim 1 itself, which makes clear that the recitation of interchangeable inner members is a limitation to the manufacturing steps of the claim. Other clauses in the claim rely upon the recited interchangeability of the inner members. For example, the steps of "selecting one of the first type of outer member or the second type of outer member from the plurality of outer members," "selecting one of the first type of inner member or the second type of inner member from the plurality of inner members," and "conjoining the selected inner member to the selected outer member such the inner member is within the outer member" can occur because of the interchangeability of the inner members. Reconsideration of this rejection is respectfully requested.

Claims 11 and 12 are believed to be rejected under 35 U.S.C. 103(a) as being unpatentable over Masek. Given the above discussion of Masek with respect to claim 1, from which claims 11 and 12 depend, it is respectfully submitted that claims 11 and 12 are not unpatentable over Masek.

In view of the foregoing, reconsideration and allowance of the application is respectfully requested.

Application No. 10/763,908  
Amendment dated Feb. 29, 2008  
Reply to the Office action of Aug. 31, 2007

The Commissioner is hereby authorized to charge any which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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